IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6849 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRERNA HINDI HIGHER SECONDARY SCHOOL - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR DHIRENDRA MEHTA for Petitioner:1
MS KRINA CALLA AGP for Respondents:1-3
MR JS YADAV for Respondent:5

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/08/2007

ORAL JUDGMENT

1. In the present petition, petitioner,-school management has challenged a part of the order dated 19.04.1997 passed by the Commissioner of Higher

Education, State of Gujarat, in which the said authority directed the recovery of (i) grant and salary paid to type instructor Shri Alkesh B. Pandya who was appointed with effect from 10.12.1990 and (ii) grants given to the petitioner towards maintenance and other expenses for starting the vocational courses. The petitioner has also challenged the consequence order dated 14.05.1997 passed by the District Education Officer, Gandhinagar District.

2. The petitioner is running a higher secondary school with a permission of the authority to add certain classes of vocational training in Standard XI and XII. For this purpose, the petitioner made appointments of certain instructors and also received construction and maintenance grant from the State Government. About three years after the petitioner was granted such permission, the petitioner approached the Education Department of the State Government seeking permission to close down the classes since sufficient numbers of students were not available for such vocational courses. While considering such an application of the petitioner, the Commissioner of Higher Education

made above observations directing recovery of the grant released by the Government. District Education Officer, therefore, passed consequential order on 14.05.1997, which is also impugned in this petition.

3. Having heard the learned counsel appearing for the parties, I find substance in the submissions made by the learned counsel D K Mehta appearing for the petitioner that the entire issue has been concluded against the petitioner without following principles of natural justice. It is not in dispute that no show cause notice or any other formality of opportunity was granted to the petitioner before the Commissioner made abovementioned observations in his impugned order dated 19.04.1997. In fact, said observations were made in an application filed by petitioner seeking permission to close down the courses. Nothing has been brought on record to suggest that while taking up such an application, the Commissioner put the petitioner to notice about the proposal to direct recovery of grant already paid. Even consequential order passed by the District Education Officer was not proceeded by any notice. Though the Commissioner had directed that procedure in accordance with rules undertaken for

recovery of salary/grant for the Type Instructor, the District Education Officer passed the order without any further formality.

4. Though learned Assistant Government Pleader Mrs.Calla sought to canvass that the petitioner was paid grant on condition that the course will be continued for a period of 10 years failing which the petitioner will be liable to refund the grant, Shri D.K.Mehta, learned counsel appearing for the petitioner points out that in one of the orders releasing the grant, it is specifically stated that if the course is shut down without sufficient and satisfactory reasons, the grant will become recoverable. It is not necessary for me to adjudicate on these rival contentions. Suffice it to say, that this is not one of the cases wherein requirement of hearing can be totally dispensed with. It is true that principle of natural justice cannot be put in a straight-jacket and where only one conclusion is possible the Court may not require rehearing which would be anti-formality. In the present case, however, I find that the petitioner has some arguable points to raise which need to be examined by the authorities before passing final

order.

5. In the result, this petition is allowed. Impugned order dated 19.04.97 passed by the Commissioner insofar as the same pertains to observations and the order dated 14.05.1997 passed by the District Education Officer, Gandhinagar District, are quashed and set aside.

6. It would be, however, proper for the respondents to pass any order in accordance with law after hearing the petitioner. For the purpose of this petition, it is provided that no separate show cause notice would be necessary and if the petitioner makes a detailed representation putting forth all his contentions against such proposal for recovery, within period of four weeks from today the same shall be examined by the authorities in accordance with rules.

7. With the aforesaid directions and observations, petition is disposed of. Rule is made absolute to the aforesaid extent.

(AKIL KURESHI, J.)

Amit/-